THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

WRIT APPEAL NO.2163 OF 1998

DATED:19-04-2018

Between:

Jaladi Sita Rama Koteswara Rao
and others … Appellants

And

Government of Andhra Pradesh,
Rep. by its Addl. Secretary, Energy, Forests,
Environment,
Secretariat Buildings
Hyderabad
and others … Respondents

COUNSEL FOR THE APPELLANTS: Mr. M.P. Chandramouli

COUNSEL FOR RESPONDENT NOs.1 to 3: G.P. for Land Acquisition (AP)

COUNSEL FOR RESPONDENT NOs.4 to 6: None appeared

THE COURT MADE THE FOLLOWING:

JUDGMENT: *(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)*

This writ appeal is filed against order dt.08.09.1998 in W.P. No.33513 of 1997.

2. We have heard M.P. Chandramouli, learned counsel for the appellants, and the learned Government Pleader for Land Acquisition (AP).

3. The appellants are the owners of certain extents of lands individually which altogether come to Acs.4.00 in T.S. Nos.209, 210/4, 211 and 214 of Tenali Town (hereinafter referred to as "the subject land"). A 33 K.V. Sub-station of the Andhra Pradesh State Electricity Board (APSEB) is in existence opposite to the subject lands. The Divisional Engineer, APSEB, Electrical, Operation, Tenali, addressed a letter dt.25.09.1990 to appellant Nos.1, 3 and 5 informing that construction of 132 KV/33 KV Sub-station near the subject land in Telani is proposed and that for that purpose the APSEB proposes to acquire the subject land. He requested for giving consent for such acquisition. A consent letter was issued by appellant No.1 on his and also on behalf of other appellants. Photo type letters of consent were addressed by the appellants on 05.10.1990 to the Divisional Engineer for handing over the subject land subject to certain conditions which mainly include

assessment of value of land according to the provisions of the Land Acquisition Act, 1894 (for short, "the Act"). Thereafter, correspondence was exchanged between the parties and possession of a part of the land was taken by the Assistant Executive Engineer, TLC Sub-division, APSEB, Guntur, in January, 1991 and that of the remaining land was taken in July, 1991.

4. Under first phase, vide G.O. Rt. No.613, Energy, Forest, Environment, Science and Technology, (P.R.11) Department, dt.12.8.1991, notification under Section 4(1) of the Act was published in the Official Gazette dt.30.09.1991, proposing to acquire Acs.2.40945 sft. for the purpose of construction of 132 KV Sub-station and Staff Quarters in Tenali and the Sub-Collector, Tenali, his staff and workmen were authorized to exercise powers conferred by Section 4(2) of the Act. A declaration under Section 6 of the Act was made vide Memo dated 11.08.1992, and the same was published in the Official Gazette dt.15.10.1992. Under second phase, vide G.O. Rt. No.568, Energy, Forest, Environment, Science & Technology (P.R.11) Department, dt.31.07.1992, notification under Section 4(1) of the Act was published in the Official Gazette dt.15.10.1992 proposing to acquire Ac.1.055227 cents.

5. Notices under Sections 9(3) and 10 of the Act were issued to the appellants for enquiry on 20.12.1993. Appellant No.1 appeared before the Sub-Collector, Tenali and claimed compensation between Rs.600/- and Rs.800/- per sq. yard. The appellants were asked to appear before the officers of the APSEB and accordingly the appellants appeared and claimed the market value at the same rate at which they claimed before the Sub-Collector making it clear that any compensation paid at the rate less than Rs.800/- per sq. yard will be received under protest and without prejudice to their rights and contentions for recovery of enhanced rate from the civil court on a reference under Section 18 of the Act. It is the pleaded case of the appellants that subsequently several negotiations took place during which the Superintending Engineer, TLC Division, Guntur, offered a sum of Rs.1.00 lakh per acre as compensation which the appellants claimed to have rejected. Eventually, the parties failed to arrive at a consensus on the market value of the subject lands. This prompted the appellants to approach this Court by filing W.P. No.33513 of 1997 for a writ of mandamus compelling the respondents to initiate action in accordance with law as declared by this Court and to determine the compensation payable to the appellants

and to pay the same to them without prejudice to their rights for enhancement of the compensation so determined by seeking reference under Section 18 of the Act to the civil court.

6. Counter affidavits were filed on behalf of the respondents wherein it was averred that the negotiations between the parties for fixing the market value of the subject lands did not fructify as the appellants were claiming exorbitant amount as compensation. In the additional counter affidavit filed by the Executive Engineer of the APSEB it was stated that while the funds for payment of compensation under the second phase were deposited, as the Land Acquisition Officer (LAO), Tenali, failed to intimate the amount to be deposited for the lands acquired under phase-I they could not deposit funds for the said phase. It was further stated that the LAO, vide his letter dt.19.2.1996 requested the APSEB to deposit Rs.5.11 lakhs stating that the notifications stood lapsed in both the cases as sufficient funds were not provided to meet the cost of acquisition and hence fresh notifications have to be issued. In the counter affidavit filed by the APSEB it was specifically stated that as the notifications lapsed, it requested the Government to issue fresh notifications but the Government did not oblige.

7. Having regard to the respective pleadings of the parties, the learned single Judge framed the following point for consideration.

> "The point that arises for consideration is whether the notifications issued u/Sec. 4(1) of the Act lapsed in view of the provisions of Sec. 11A of the Act?"

8. On behalf of the petitioners it was argued before the learned Judge that as the Award was not passed within two years of publication of declaration under Section 6 of the Act, the land acquisition proceedings got lapsed by operation of Section 11-A of the Act. It was, however, contended on behalf of the respondents that as advance possession of the subject lands was taken, the lands stood vested in the Government under Section 17(1) of the Act and therefore the provisions of Section 11-A of the Act do not get attracted and that consequently the land acquisition proceedings did not lapse on account of non-passing of the Award within the stipulated time of two years. In support of this contention, the respondents relied upon the judgment of the Supreme Court in **Satendra Prasad Jain v. State of U.P.**[1] and also the judgment of the Full Bench of this Court in **Revenue Divisional Officer, Guntur v. Vasireddy Rama Bhanu Bhupal**[2]. The learned single

[1] (1993) 4 SCC 369
[2] AIR 1970 AP 262

Judge mainly relied upon the judgment in **Satendra Prasad Jain** (1 supra) in holding that as possession was taken with the consent of the appellants, the proceedings did not lapse on account of failure of the respondents to pass Award within two years of the publication of declaration under Section 6 of the Act as envisaged under Section 11-A of the Act. Incidentally, the learned Judge also referred to and relied upon the Full Bench judgment of this Court in **Vasireddy Rama Bhanu Bhupal** (2 supra). The learned Judge also held that the plea taken in the counter affidavits and additional counter affidavit that the notifications lapsed was under misconception of law and that therefore the same does not enure to the benefit of the appellants.

9. At the hearing before us, the learned counsel reiterated the respective stands taken by the parties before the learned single Judge. We have carefully considered the submissions of the learned counsel for the parties with reference to the record.

10. Section 11-A of the Act introduced by way of Amendment by Act 68 of 1984 mandates that the Collector shall make an award within a period of two years from the date of publication of declaration and it also envisaged consequence

of failure to do so, namely, the entire proceedings for the acquisition getting lapsed.

11. The Act prescribed procedure for acquisition of the land. Under the Scheme of the Act, the process of acquisition commences from the date of publication of notification under Section 4(1) of the Act and culminates in the passing of the Award. The process in between the said two stages has to undergo several stages, as succinctly discussed by a three-Judge Bench of the Supreme Court in **R.L. Jain (D) by LRs. v. D.D.A.**[3] which is apt to be reproduced hereinbelow.

> "…The Land Acquisition Act makes complete provision for acquiring title over the land, taking possession thereof and for payment of compensation to the landowner. Part II of the Act deals with acquisition and the heading of Section 4 is "Publication of preliminary notification and powers of officers thereupon". Sub-section (1) of Section 4 provides that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. Sub-section (2) provides that thereupon it shall be lawful for any officer either generally or specially authorised by such Government in this behalf and for his servants and workmen, to enter upon and survey and take levels of any

[3] AIR 2004 SC 1904

land in such locality, to dig or bore in the subsoil and to do all other acts necessary to ascertain whether the land is adapted for such purpose, etc. etc. This provision shows that the officers and servants and workmen of the Government get the lawful authority to enter upon and survey the land and to do other works only after the preliminary notification under Section 4(1) has been published. Section 5-A enables a person interested in any land which has been notified under Section 4(1) to file objection against the acquisition of the land and also for hearing of the objection by the Collector. If the State Government is satisfied, after considering the report, that any particular land is needed for public purposes or for a company, it can make a declaration to that effect under Section 6 of the Act and the said declaration has to be published in the Official Gazette and in two daily newspapers and public notice of the substance of such declaration has to be given in the locality. Thereafter the Collector is required to issue notice to persons interested under Section 9(1) of the Act stating that the Government intends to take possession of the land and that claims to compensation for all interests in such land may be made to him. Section 11 provides for making of an award by the Collector of the compensation which should be allowed for the land. Section 16 provides that when the Collector has made an award under Section 11, he may take possession of the land which shall thereupon vest absolutely in the Government, free from all encumbrances. This provision shows that possession of the land can be taken only after the Collector has made an award under Section 11. Section 17 is in the nature of an exception to Section 16 and it provides that in cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9(1), take

> possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances. The urgency provision contained in Section 17(1) can be invoked and possession can be taken over only after publication of notification under Section 9(1) which itself can be done after publication of notification under Sections 4(1) and 6 of the Act. Even here in view of sub-section (3-A) the Collector has to tender 80 per cent of the estimated amount of compensation to the persons interested/entitled thereto before taking over possession."

12. In **Satendra Prasad Jain** (1 supra), Section 11-A of the Act fell for consideration of the Supreme Court. In that case, notification under Section 4 of the Act was issued on 29.7.1986 for acquiring 29 bigas of land situated in Patti Baru, Baraut in Meerut District in the State of Uttar Pradesh. By applying the urgency provision under Section 17(4) of the Act, enquiry under Section 5-A of the Act was dispensed with. On 24.10.1986 Section 6 declaration was issued. After expiry of fifteen days from the date of notice under Section 9(1), the State invoked the provisions of Section 17(1) of the Act and took possession of the land without passing an Award. A writ petition filed questioning the acquisition proceedings was dismissed by the Allahabad High Court and the Special Leave Petition filed by the landowners also ended in dismissal. On 13.1.1989 the Land Acquisition Officer resolved to exclude the

subject land from the acquisition and a decision was taken by the authority concerned on the ground that the land was not suitable for construction of Mandi of the Agricultural Market Produce Samiti of Baraut. A writ petition was filed for a mandamus to make and publish the Award. The High Court dismissed the writ petition on the ground that as Award was not passed within the stipulated period of two years, by reason of operation of Section 11-A of the Act the proceedings for acquisition of the land had lapsed. The High Court further held that by the mere fact that possession had been taken in pursuance of Section 17(1), the necessity of giving an Award, as mandated by Section 11-A, within a period of two years from the date of publication of the notification under Section 4 could not be dispensed with. Reversing the judgment of the Allahabad High Court, the Supreme Court referred to and relied upon the judgment in **Lt. Governor of H.P. v. Avinash Sharma**[4] wherein it was held as under:

"…after possession has been taken pursuant to a notification under Section 17(1) the land is vested in the Government, and the notification cannot be cancelled under Section 21 of the General Clauses Act, nor can the notification be withdrawn in exercise of the powers under Section 48 of the Land Acquisition Act. Any other view would enable the State Government to circumvent the specific provision by

[4] (1970) 2 SCC 149

relying upon a general power. When possession of the land is taken under Section 17(1), the land vests in the Government. There is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification."

13. In **Satendra Prasad Jain** (1 supra) as the State sought to abdicate its responsibility of making payment of compensation having taken possession of the land in pursuance of the notification issued under Section 4(1) of the Act, by taking shelter under Section 11-A of the Act, the Supreme Court held in no uncertain terms that once possession is taken as per Section 17(1) of the Act, the land gets vested in the State and hence the provisions of Section 11-A of the Act would not have applied to such proceedings. It therefore necessarily means that to be able to save the land acquisition proceedings from getting lapsed, the State has to necessarily prove that it has taken possession by following the provisions of the Act and not dehors it.

14. As explained in detail by the Supreme Court in **R.L. Jain** (3 supra), possession could be taken after publication of Notification under Section 4(1) of the Act at different stages, i.e., if urgency clause is invoked under Section 17(4) of the Act, enquiry under Section 5-A of the Act could be dispensed with and possession could be taken on the expiration of fifteen days

from the date of publication mentioned in sub-section (1) of Section 9, as envisaged under Section 17(1) of the Act. Even while doing so, sub-section (3-A) of Section 17 of the Act mandates that the Land Acquisition Officer shall tender payment of 80% of compensation as estimated by him to the persons interested/entitled thereto, unless the contingencies as provided in sub-clause (b) of the said provision existed. In case where there is no urgency, possession could be taken after publication of award under Section 16 of the Act.

15. In the present case on hand, none of the steps envisaged commencing from Section 4(1) of the Act were taken, before the possession of the land was taken. There is no provision under the Act which empowers the State to take possession of the land (even with the consent of the land owner) without following the procedure under the Act as explained hereinbefore.

16. This view of ours is fortified by the judgment in **R.L. Jain** (3 supra). It will pay us to reproduce the relevant portions of the observations of the Apex Court in that case.

> "11. … The scheme of the Act does not contemplate taking over of possession prior to the issuance of notification under Section 4(1) of the Act and if possession is taken prior to the said notification it will be dehors the Act. It is for this reason that both

> Sections 11(1) and 23(1) enjoin the determination of the market value of the land on the date of publication of notification under Section 4(1) of the Act for the purpose of determining the amount of compensation to be awarded for the land acquired under the Act. These provisions show in unmistakable terms that publication of notification under Section 4(1) is the sine qua non for any proceedings under the Act. …"

The above being the indisputable position in law, by no stretch of imagination can one treat the taking of possession in the instant case as possession having been taken under Section 17(1) of the Act.

17. In our opinion, the learned Single Judge has fallen into a serious error in relying upon the judgment in **Satendra Prasad Jain** (1 supra) as, as discussed above, in that case, possession of the land was taken after the whole procedure upto the stages prescribed under Sections 4(1), 17(4), 9, 10 and 17(1) was gone through. In the light of those facts, the Supreme Court held that once lawful possession was taken, the land vests in the Government under Section 17(1) of the Act and therefore it cannot wriggle out of its responsibility to pass Award. Hence, the ratio in **Satendra Prasad Jain** (1 supra) would not come to the aid of the respondents and the learned single Judge has wrongly applied the said ratio in order to save the land acquisition proceedings which otherwise lapsed.

18. As regards the judgment in **Vasireddy Rama Bhanu Bhupal** (2 supra) dealing with the issue as to whether interest was payable if possession was taken before initiation of land acquisition proceedings, the Full Bench held that the expression, "taking possession of the land" under Section 28 of the Act would only mean, taking possession under or in pursuance of the Act and that if in anticipation of the initiation of the land acquisition proceedings possession was taken with the consent of the land owner the same can be treated as possession having been taken under the Act. The Full Bench has placed liberal interpretation on Section 28 of the Act so as not to deny interest on the enhanced compensation to the landowner having been deprived of the possession of the land. It has relied upon various judgments of the Supreme Court and that of the Privy Council in arriving at the conclusion that the landowner is entitled to interest on the enhanced compensation from the date of taking possession of the land.

19. In the first place, the judgment in **Vasireddy Rama Bhanu Bhupal** (2 supra) has no relevance or bearing on interpretation of Section 11-A of the Act, as the said judgment turned on the language of Section 28 of the Act. The learned single Judge, however, has borrowed the concept of 'taking

possession' from the judgment in **Satendra Prasad Jain** (1 supra) so as to save the land acquisition proceedings, without keeping in mind the fact that in the said judgment possession was taken in pursuance of the Notification under Section 4(1) of the Act by following the procedure under the Act. Even otherwise, the view taken in **Vasireddy Rama Bhanu Bhupal** (2 supra) as regards the nature of possession taken prior to the issuance of Notification under Section 4(1) of the Act runs contrary to the view taken by the Supreme Court in **Union of India v. Budh Singh**[5]. It is profitable to note the subsequent development of law in this regard. Conflicting views were expressed on the entitlement of a party to payment of interest under Section 28 or 34 of the Act, between **Shree Vijay Cotton & Oil Mills Ltd. v. State of Gujarat**[6] and **Budh Singh** (5 supra). The issue was referred to a Larger Bench of three Judges in **R.L. Jain** (3 supra). On behalf of the claimants, the judgment in **Vasireddy Rama Bhanu Bhupal** (2 supra) among other judgments was referred to and relied upon in support of the claim for payment of interest for the period anterior to the publication of Notification under Section 4(1) of the Act as possession was taken by the State prior to

[5] (1995) 6 SCC 233
[6] (1991) 1 SCC 262

such Notification. The Supreme Court, however, leaned towards the view taken in **Budh Singh** (5 supra). The following part of the report is apposite to be referred to:

> **"**12. The expression "the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited" should not be read in isolation divorced from its context. The words "such compensation" and "so taking possession" are important and have to be given meaning in the light of other provisions of the Act. "Such compensation" would mean the compensation determined in accordance with other provisions of the Act, namely, Sections 11 and 15 of the Act which by virtue of Section 23(1) mean market value of the land on the date of notification under Section 4(1) and other amounts like statutory sum under sub-section (1-A) and solatium under sub-section (2) of Section 23. The heading of Part II of the Act is "Acquisition" and there is a sub-heading "Taking Possession" which contains Sections 16 and 17 of the Act. The words "so taking possession" would therefore mean taking possession in accordance with Section 16 or 17 of the Act. These are the only two sections in the Act which specifically deal with the subject of taking possession of the acquired land. Clearly, the stage for taking possession under the aforesaid provisions would be reached only after publication of the notification under Sections 4(1) and 9(1) of the Act. If possession is taken prior to the issuance of the notification under Section 4(1) it would not be in accordance with Section 16 or 17 and will be without any authority of law and consequently cannot be recognised for the purposes of the Act. For parity of reasons the words "from the date on which he took possession of the land" occurring in Section 28 of the Act would also mean lawful taking of possession in accordance with Section 16 or 17 of the Act. The words "so

taking possession" can under no circumstances mean such dispossession of the owner of the land which has been done prior to publication of notification under Section 4(1) of the Act which is dehors the provisions of the Act."

…

"17.1. The normal rule, therefore, is that if on account of acquisition of land a person is deprived of possession of his property he should be paid compensation immediately and if the same is not paid to him forthwith he would be entitled to interest thereon from the date of dispossession till the date of payment thereof. But here the land has been acquired only after the preliminary notification was issued on 9-9-1992 as earlier acquisition proceedings were declared to be null and void in the suit instituted by the landowner himself and consequently, he was not entitled to compensation or interest thereon for the anterior period."

"18. In a case where the landowner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act the Government merely takes possession of the land but the title thereof continues to vest with the landowner. It is fully open for the landowner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the landowner is entitled while determining the compensation amount payable to the landowner for the acquisition of the property. The provisions of Section 48 of the Act lend support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded."

In the light of the judgment in **R.L. Jain** (3 supra), the view taken in **Vasireddy Rama Bhanu Bhupal** (2 supra) can no longer be treated as laying down a correct law as regards the nature of possession taken prior to the initiation of the proceedings under the Act.

20. The above discussion will lead us to hold that in view of the failure of the State to adhere to the provisions of the Act, the possession taken by the State dehors the provisions of the Act has no legal sanctity and the same does not exempt operation of Section 11-A of the Act and save land acquisition proceedings from getting lapsed due to failure to pass Award within the stipulated period.

21. It has now come to light that much after the disposal of the writ petition, Award Nos.11 and 12 relating to Acs.3.00 and Ac.1.00 respectively were passed on 15.9.1999. It is also brought to our notice that the appellants sought for reference of the dispute relating to the market value fixed by the LAO, that in pursuance thereof reference was made, that the Reference Court has rejected the claim for enhancement and that the same was questioned in LAAS Nos.1610 of 2005 and 444 of 2007 by the appellants. In the light of the view we have taken that the land acquisition proceedings have lapsed due to

the failure of the respondents to pass the Award within the stipulated time of two years from the date of publication of declaration, those Awards are nonest in law and consequently they do not bind the appellants.

22. The respondents having taken possession of the land and been using the same for public purpose, namely, establishment of Electrical Sub-station, it is their obligation to initiate fresh acquisition proceedings for payment of compensation as per the Law of Land Acquisition in force as on the date of such initiation. A mandamus shall therefore issue to the respondents to initiate land acquisition proceedings, determine compensation in terms thereof and pay the same to the appellants within three months from the date receipt of this judgment.

23. In the result, the judgment of the learned single Judge is set aside and the writ appeal is allowed, subject to the above directions.

C.V. NAGARJUNA REDDY, J

D.V.S.S. SOMAYAJULU, J

19-4-2018

Note: LR copies to be marked.
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